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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. L-08-633-2
	§	CIVIL ACTION NO. L-09-48
VICENTE FLORES SALDIVAR;	§	
AKA: JESUS VICENTE FLORES	§	
SALDIVAR	§	

MEMORANDUM

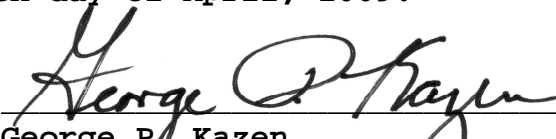
Pending is Petitioner Vicente Flores Salvidar's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. (Criminal Docket No. 91.) Petitioner argues, among other things, that the Court refused to hear his argument at sentencing that "information was incorrect." Petitioner implies throughout the motion that he failed to directly appeal his sentence. However, a notice of appeal was timely filed in Petitioner's case (Criminal Docket No. 79), and his case is currently before the Court of Appeals, U.S. v. Saldivar, No. 09-40166 (5th Cir. filed Feb. 10, 2009).

Petitioner's motion is premature. "[A] criminal defendant may not collaterally attack his conviction until it has been affirmed on direct appeal." Fassler v. U.S., 858 F.2d 1016, 1019 (5th Cir. 1988); accord Jones v. U.S., 453 F.2d 351, 352 (5th Cir. 1972). But see U.S. v. Prows, 448 F.3d 1223, 1228 (10th Cir. 2006) (finding no jurisdictional bar to a district

court entertaining a § 2255 motion while a direct appeal is pending, but noting it should only do so under extraordinary circumstances).

Petitioner's motion (Criminal Docket No. 91) will be dismissed without prejudice.

DONE at Laredo, TX, this 20th day of April, 2009.

  
George P. Kazen  
United States District Judge